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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 177**

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**Introduced by Assembly Members Ruskin and V. Manuel Perez**  
**(Coauthors: Assembly Members Beall, Block, Logue, and Salas)**  
(Coauthors: Senators Negrete McLeod and Price)

February 2, 2009

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An act to amend Sections 14842 and 14842.5 of the Government Code, and to amend Section 999.9 of the Military and Veterans Code, relating to public contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 177, as amended, Ruskin. Public contracts: small businesses and disabled veteran business enterprises.

(1) Existing law provides for various programs to encourage the participation of small businesses and disabled veteran business enterprises, as certified by the Department of General Services, in state agency contracts. Existing law revokes, for a specified period, the small business or microbusiness certification of a business that obtained the classification as a small business or microbusiness by reason of having furnished incorrect supporting information or withholding relevant information, and suspends that business from transacting with the state,

as specified. Existing law extends the period of revocation and suspension for additional or subsequent violations *and requires the business to pay specified costs to the state related to the contract.*

This bill would increase the period of certification revocation and suspension for such violations, *revise the types of costs payable to the state*, and additionally require the revocation of the business' seller's permit for additional or subsequent violations.

(2) Existing law also revokes, for a specified period, the small business or microbusiness or disabled veteran business enterprise certification of a person who, among other activities, fraudulently attempts to become certified as a disabled veteran business enterprise or as a small business or microbusiness *and imposes civil penalties upon those persons.* Existing law additionally suspends, for a specified period, that person from bidding on or participating in any state contract or project. Existing law extends the period of revocation and suspension for additional and subsequent violations, *and requires the person to pay specified costs to the state related to the contract.*

This bill would increase the period of certification revocation and suspension for such violations, ~~and additionally require the revocation of the business' seller's permit for additional or subsequent violations.~~

This bill would impose civil penalties against any person who knowingly and fraudulently represents that a commercially useful function is being performed by a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract, and would subject that person to revocation of the disabled veteran business enterprise certification and suspension from bidding on or participating in any state contract or project for a specified period.

This bill would additionally ~~require that any existing contract between any~~ *authorize an* awarding department and contractor ~~be terminated to terminate a contract~~ if the contractor knowingly and fraudulently represents that a commercially useful function is being performed by a disabled veteran business enterprise or by a small business or microbusiness, and require the Controller to ~~withhold any payments to that contractor except for outstanding invoices~~ *set off penalties and costs awarded to the state against payments due to the contractor.*

This bill would require persons or businesses found to have obtained small business or disabled veteran business enterprise certification by fraudulent or improper means to pay costs incurred by the awarding department or the Department of General Services, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14842 of the Government Code is  
2 amended to read:

3 14842. (a) A business that has obtained classification as a  
4 small business or microbusiness by reason of having furnished  
5 incorrect supporting information or by reason of having withheld  
6 information, and that knew, or should have known, the information  
7 furnished was incorrect or the information withheld was relevant  
8 to its request for classification, and that by reason of that  
9 classification has been awarded a contract to which it would not  
10 otherwise have been entitled, shall do all of the following:

11 (1) Pay to the state any difference between the contract amount  
12 and what the state's costs would have been if the contract had been  
13 properly awarded.

14 (2) Pay to the awarding *state agency and the* department an  
15 amount that is equal to the costs incurred for investigating the  
16 small business or microbusiness certification that led to the finding  
17 that the contract had been improperly awarded. *Costs incurred*  
18 *shall include, but are not limited to, costs and attorney's fees paid*  
19 *by the awarding state agency or the department related to hearings*  
20 *and court appearances.*

21 (3) In addition to the ~~amount~~ *amounts* described in ~~subdivision~~  
22 ~~(a) paragraphs (1) and (2),~~ be assessed a penalty in an amount of  
23 not more than 10 percent of the amount of the contract involved.

24 (b) ~~Suspend~~ *The department shall suspend* any person who  
25 violates subdivision (a) from transacting any business with the  
26 state either directly as a prime contractor or indirectly as a  
27 subcontractor, for a period of not less than three years and not  
28 more than 10 years. State agencies may reject the bid of a supplier  
29 offering goods, information technology, or services manufactured  
30 or provided by a subcontractor if that subcontractor has been  
31 declared ineligible to transact any business with the state under  
32 this chapter, even though the bidder is a business in good standing.

33 (c) All payments to the state pursuant to paragraphs (1) and (2)  
34 of subdivision (a) shall be deposited in the fund *or funds* out of  
35 which *payments on* the contract involved ~~was awarded~~ *were made,*

1 *except payments to the department made pursuant to paragraph*  
2 *(2) of subdivision (a) shall be deposited in the Service Revolving*  
3 *Fund.*

4 (d) All payments to the state pursuant to paragraph (3) of  
5 subdivision (a) shall be deposited in the state General Fund.

6 (e) The small business certification of a business found to have  
7 violated subdivision (a) shall be revoked by the department for a  
8 period of not less than five years. For an additional or subsequent  
9 violation, the period of certification revocation or suspension shall  
10 be extended for a period of up to 10 years and shall result in the  
11 revocation of the business' seller's permit. The certification  
12 revocation shall apply to the principals of the business and any  
13 subsequent businesses formed by *one or more of* those principals.

14 (f) Prior to the imposition of any sanctions under this article, a  
15 business shall be entitled to a public hearing and to at least five  
16 working days' notice of the time and place thereof. The notice  
17 shall state the reasons for the hearing.

18 (g) *Any business or person that fails to satisfy any of the amounts*  
19 *specified in paragraphs (1) to (3), inclusive, of subdivision (a)*  
20 *shall be prohibited from further contracting with the state until*  
21 *all amounts are satisfied.*

22 (h) *For purposes of this section, "awarding state agency" means*  
23 *a state agency or other state governmental entity that awarded the*  
24 *contract, if it was not awarded by the department.*

25 SEC. 2. Section 14842.5 of the Government Code is amended  
26 to read:

27 14842.5. (a) It shall be unlawful for a person to do any of the  
28 following:

29 (1) Knowingly and with intent to defraud, fraudulently obtain,  
30 retain, attempt to obtain or retain, or aid another in fraudulently  
31 obtaining or retaining or attempting to obtain or retain, certification  
32 as a small business or microbusiness enterprise for the purposes  
33 of this chapter.

34 (2) Willfully and knowingly make a false statement with the  
35 intent to defraud, whether by affidavit, report, or other  
36 representation, to a state official or employee for the purpose of  
37 influencing the certification or denial of certification of any entity  
38 as a small business or microbusiness enterprise.

39 (3) Willfully and knowingly obstruct, impede, or attempt to  
40 obstruct or impede, any state official or employee who is

1 investigating the qualifications of a business entity that has  
2 requested certification as a small business or microbusiness  
3 enterprise.

4 (4) Knowingly and with intent to defraud, fraudulently obtain,  
5 attempt to obtain, or aid another person in fraudulently obtaining  
6 or attempting to obtain, public moneys, *contracts, or funds*  
7 *expended under a contract, that are awarded by any state agency,*  
8 *department, officer, or other state governmental agency,* to which  
9 the person is not entitled under this chapter.

10 (5) Knowingly and with intent to defraud, fraudulently represent  
11 certified small business or microbusiness participation in order to  
12 obtain or retain a bid preference or a state contract.

13 (6) Knowingly and with intent to defraud, fraudulently represent  
14 that a commercially useful function is being performed by a  
15 certified small business or microbusiness in order to obtain or  
16 retain a bid preference or a state contract.

17 (7) *Willfully and knowingly make or subscribe to any statement,*  
18 *declaration, or other document that is fraudulent or false as to*  
19 *any material matter, whether or not that falsity or fraud is*  
20 *committed with the knowledge or consent of the person authorized*  
21 *or required to present the declaration, statement, or document.*

22 (8) *Willfully and knowingly aid or assist in, or procure, counsel,*  
23 *or advise, the preparation or presentation of a declaration,*  
24 *statement, or other document that is fraudulent or false as to any*  
25 *material matter, regardless of whether that falsity or fraud is*  
26 *committed with the knowledge or consent of the person authorized*  
27 *or required to present the declaration, statement, or document.*

28 (9) *Establish, or knowingly aid in the establishment of, or*  
29 *exercise control over, a firm found to have violated any provision*  
30 *of paragraphs (1) to (8), inclusive.*

31 (b) (1) Any person who is found by the department to have  
32 violated any of the provisions of subdivision (a) is subject to a  
33 civil penalty of not less than ten thousand dollars (\$10,000) nor  
34 more than thirty thousand dollars (\$30,000) for the first violation,  
35 and a civil penalty of not less than thirty thousand dollars (\$30,000)  
36 nor more than fifty thousand dollars (\$50,000) for each additional  
37 or subsequent violation.

38 (2) A person who violates any of the provisions of subdivision  
39 (a) shall pay all costs incurred by the awarding department and  
40 the Department of General Services for any investigations that led

1 to the finding of the violation. *Costs incurred shall include, but*  
2 *are not limited to, costs and attorney's fees paid by the awarding*  
3 *state agency or the department related to hearings and court*  
4 *appearances. All payments to the state pursuant to this paragraph*  
5 *shall be deposited in the fund or funds out of which payments on*  
6 *the contract involved were made, except payments to the*  
7 *department shall be deposited in the Service Revolving Fund.*

8 (c) The department shall revoke the small business or  
9 microbusiness certification of any person that violates subdivision  
10 (a) for a period of not less than five years, and shall, in addition  
11 to the penalties provided for in subdivision (b), be suspended from  
12 bidding on, or participating as a contractor, a subcontractor, or a  
13 supplier in, any state contract or project for a period of not less  
14 than three years nor more than 10 years ~~and shall result in the~~  
15 ~~revocation of the business' seller's permit.~~ However, for an  
16 additional or subsequent violation, the period of certification  
17 revocation or suspension shall be extended for a period of up to  
18 three years. The certification revocation shall apply to the principals  
19 of the business and any subsequent businesses formed by *one or*  
20 *more of* those principals. Any business or person who fails to  
21 satisfy *any of the penalties imposed pursuant to subdivisions (b)*  
22 ~~and (c) paragraphs (1) and (2) of subdivision (b)~~ shall be prohibited  
23 from further contracting with the state until the penalties are  
24 satisfied.

25 (d) If a contractor, subcontractor, supplier, subsidiary, or affiliate  
26 thereof, has been found by the department to have violated  
27 subdivision (a) and that violation occurred within three years of  
28 another violation of subdivision (a) found by the department, the  
29 department shall prohibit that contractor, subcontractor, supplier,  
30 subsidiary, or affiliate thereof, from entering into a state project  
31 or state contract and from further bidding to a state entity, and  
32 from being a subcontractor to a contractor for a state entity and  
33 from being a supplier to a state entity.

34 (e) (1) In addition to the penalties imposed by this section, if  
35 a contractor is found to be in violation of paragraph (6) of  
36 subdivision (a) any existing contract between that contractor and  
37 any awarding department ~~shall be terminated~~ *may be terminated*  
38 *at the discretion of the awarding state agency*, and the Controller  
39 ~~shall withhold any payments to that contractor except for~~

1 ~~outstanding invoices; shall set off penalties and costs due to the~~  
2 ~~state against any payments due to that contractor.~~

3 (2) For purposes of this ~~subdivision~~ section:

4 (A) “Awarding ~~department~~” *state agency*” means any state  
5 agency, department, governmental entity, or other officer or entity  
6 empowered by law to enter into contracts on behalf of the State  
7 of California.

8 (B) “Contractor” means any person or persons, firm, partnership,  
9 corporation, or combination thereof who submits a bid and enters  
10 into a contract with a representative of a state agency, department,  
11 governmental entity, or other officer empowered by law to enter  
12 into contracts on behalf of the State of California.

13 SEC. 3. Section 999.9 of the Military and Veterans Code is  
14 amended to read:

15 999.9. (a) It shall be unlawful for a person to:

16 (1) Knowingly and with intent to defraud, fraudulently obtain,  
17 retain, attempt to obtain or retain, or aid another in fraudulently  
18 obtaining or retaining or attempting to obtain or retain, certification  
19 as a disabled veteran business enterprise for the purpose of this  
20 article.

21 (2) Willfully and knowingly make a false statement with the  
22 intent to defraud, whether by affidavit, report, or other  
23 representation, to a state official or employee for the purpose of  
24 influencing the certification or denial of certification of any entity  
25 as a disabled veteran business enterprise.

26 (3) Willfully and knowingly obstruct, impede, or attempt to  
27 obstruct or impede, any state official or employee who is  
28 investigating the qualifications of a business entity that has  
29 requested certification as a disabled veteran business enterprise.

30 (4) Knowingly and with intent to defraud, fraudulently obtain,  
31 attempt to obtain, or aid another person in fraudulently obtaining  
32 or attempting to obtain, public moneys, contracts, or funds  
33 expended under a contract, that are awarded by any state agency,  
34 department, officer, or other state governmental agency, to which  
35 the person is not entitled under this article.

36 (5) Knowingly and with intent to defraud, fraudulently represent  
37 participation of a disabled veteran business enterprise in order to  
38 obtain or retain a bid preference or a state contract.

39 (6) Knowingly and with intent to defraud, fraudulently represent  
40 that a commercially useful function is being performed by a

1 disabled veteran business enterprise in order to obtain or retain a  
2 bid preference or a state contract.

3 (7) Willfully and knowingly make or subscribe to any statement,  
4 declaration, or other document that is fraudulent or false as to any  
5 material matter, whether or not that falsity or fraud is committed  
6 with the knowledge or consent of the person authorized or required  
7 to present the declaration, statement, or document.

8 (8) Willfully and knowingly aid or assist in, or procure, counsel,  
9 or advise, the preparation or presentation of a declaration,  
10 statement, or other document that is fraudulent or false as to any  
11 material matter, regardless of whether that falsity or fraud is  
12 committed with the knowledge or consent of the person authorized  
13 or required to present the declaration, statement, or document.

14 (9) Willfully and knowingly fail to file any declaration or notice  
15 with the awarding agency that is required by Section 999.2.

16 (10) Establish, or knowingly aid in the establishment of, or  
17 exercise control over, a firm found to have violated any of  
18 paragraphs (1) to (9), inclusive.

19 (b) Any person who violates any of the provisions of subdivision  
20 (a) shall be guilty of a misdemeanor punishable by imprisonment  
21 in the county jail not exceeding six months or by a fine not  
22 exceeding one thousand dollars (\$1,000), or by both. In addition,  
23 the person shall be liable for a civil penalty of not less than ten  
24 thousand dollars (\$10,000) nor more than thirty thousand dollars  
25 (\$30,000) for the first violation, and a civil penalty of not less than  
26 thirty thousand dollars (\$30,000) nor more than fifty thousand  
27 dollars (\$50,000) for each additional or subsequent violation. A  
28 defendant who violates any of the provisions of subdivision (a)  
29 shall pay all costs and attorney's fees incurred by the plaintiff in  
30 a civil action brought pursuant to this section, including costs  
31 incurred by the awarding department or the Department of General  
32 Services.

33 (c) (1) The Department of General Services shall suspend any  
34 person who violates subdivision (a) from bidding on, or  
35 participating as either a contractor, subcontractor, or supplier in,  
36 any state contract or project for a period of not less than three years  
37 and not more than 10 years, and if certified as a disabled veteran  
38 business enterprise, the department shall revoke the business'  
39 certification for a period of not less than five years. An additional  
40 or subsequent violation shall extend the periods of suspension and



1 revocation for a period of not less than 10 years ~~and shall result~~  
2 ~~in the revocation of the business' seller's permit.~~ The suspension  
3 and revocation of certification shall apply to the principals of the  
4 business and any subsequent business formed or financed by, or  
5 affiliated with, *one or more of those principals.*

6 (2) *A person that violates any of the provisions of subdivision*  
7 *(a) shall pay all costs incurred by the awarding department and*  
8 *the Department of General Services for any investigations that led*  
9 *to the finding of the violation. Costs incurred shall include, but*  
10 *are not limited to, costs and attorney's fees paid by the department*  
11 *or the Department of General Services related to hearings and*  
12 *court appearances.*

13 ~~(2)~~  
14 (3) The Department of General Services shall prohibit any  
15 business or person who fails to satisfy *any of the penalties, costs,*  
16 *and attorney's fees imposed pursuant to* ~~subdivision (b)~~  
17 ~~subdivisions (b) and (c)~~ from further contracting with the state  
18 ~~until the penalties~~ *all of the penalties, costs, and attorney's fees*  
19 *are satisfied.*

20 (d) In addition to the penalties imposed by this section, if a  
21 contractor is found to be in violation of paragraph (6) of  
22 subdivision (a) any existing contract between that contractor and  
23 any awarding department ~~shall may be terminated at the discretion~~  
24 ~~of the awarding department, and the Controller shall withhold any~~  
25 ~~payments to that contractor except for outstanding invoices. shall~~  
26 ~~set off penalties and costs due to the state against any payments~~  
27 ~~due to that contractor.~~

28 (e) The awarding department shall report all alleged violations  
29 of this section to the Department of General Services. ~~The After~~  
30 ~~any review and investigation it deems necessary, the~~ Department  
31 of General Services shall subsequently report all ~~alleged violations~~  
32 ~~allegations which have sufficient grounds to the Attorney General~~  
33 ~~who shall determine whether to bring a civil action against any~~  
34 ~~person or firm for a violation of this section. However, the~~  
35 ~~Department of General Services may pursue administrative action~~  
36 ~~and administrative penalties irrespective of whether the Attorney~~  
37 ~~General chooses to bring a civil action.~~

38 (f) The Department of General Services shall monitor the status  
39 of all reported violations and shall maintain and make available  
40 to all state departments a central listing of all firms and persons

1 who have been determined to have committed violations resulting  
2 in suspension.

3 (g) No awarding department shall enter into any contract with  
4 any person suspended for violating this section during the period  
5 of the person's suspension. No awarding department shall award  
6 a contract to any contractor utilizing the services of any person as  
7 a subcontractor suspended for violating this section during the  
8 period of the person's suspension.

9 (h) The awarding department shall check the central listing  
10 provided by the Department of General Services to verify that the  
11 person or contractor to whom the contract is being awarded, or  
12 any person being utilized as a subcontractor or supplier by that  
13 person or contractor, is not under suspension for violating this  
14 section.